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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,577	11/13/2000	John Calce	VIZR.10001NP	7169
10027	7590	06/16/2005	EXAMINER	
ANDERSON, LEVINE & LINTEL L.L.P.			ALPERT, JAMES M	
14785 PRESTON ROAD			ART UNIT	
SUITE 650			PAPER NUMBER	
DALLAS, TX 75254			3624	

DATE MAILED: 06/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/711,577	Applicant(s) CALCE ET AL.	
	Examiner James Alpert	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The following communication is in response to Applicant's amendment filed on November 2, 2004.

Status of Claims

Claims 1-3,8,11-13,18,24,& 26 are currently amended. Claims 4-7,9-10,14-17, 19-23,& 25 are original. Claims 1-26 are now pending.

Responses to Arguments

Claims 1-10, 12-20 and 24-26 were initially rejected under 35 U.S.C 112(2) as being indefinite for failing to particularly point out and distinctly claim the invention. The rejections for Claims 7,10,17,& 20 under this section are hereby withdrawn. Applicant's amendments to the remaining Claims rejected under this section have sufficiently overcome the rejections.

Claims 1,3-11, and 13-26 were initially rejected under 35 U.S.C. 101 as being directed toward non-statutory subject matter. Applicant's arguments have been fully considered but are not persuasive. These claims remain rejected as will be discussed below.

Claims 1-26 were previously rejected under 35 U.S.C 102(e) as being anticipated by Tarbox, U.S. Patent #6154732. In light of applicant's arguments, these rejections are hereby withdrawn.

Arguments under 35 U.S.C. 101

Applicant "strongly disagrees" that there is a lack or recitation of technology in the body of the claims that stand rejected under this section. There seems to be some

Art Unit: 3624

confusion on the part of the applicant as to the requirements of the statute as they related to business methods practice. The Office has determined that method claims (and presumably "system" claims) that do not present technological basis in the preamble and the body of the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and therefore non-statutory under 35 U.S.C. §101. In contrast, a method claim that includes in the body of the claim, some structural / functional interrelationship which can only be computer implemented is considered to have a technological basis [See Ex parte Bowman, 61 USPQ2d 1669, 1671 (Bd. Pat. App. & Inter. 2001) - used only for content and reasoning since not precedential].

With regard to Applicant's method claims, these claims are directed toward a method of investing money that fails to indicate that a computer system (or some other technological apparatus) executes the method. In order to overcome the 101 rejections above, the following preamble is suggested for the method claims:

A computer implemented method for ---, or something similar.

Also, ***in the body of the claims*** include some structural / functional interrelationship which can only be computer implemented. .

With regard to Applicant's system claims, these claims are directed toward an investment system that fails to indicate how the circuitry in the preamble implements the functionality of the system. There must be some structural / functional interrelationship ***in the body of the claims***. Appropriate correction is required, and Claims 1,3-11, & 13-26 remain rejected.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-9 and 17-19 are rejected under 35 U.S.C 112. Claims 7 and 17 recite the limitation "said financial institution". Looking at the Claims upon which Claim 7 and 17 are dependent, which are Claims 3 and 13, respectively, there is no mention of any financial institution whatsoever. There is insufficient antecedent basis for these limitations in the claims. The Examiner cannot speculate as to the intent of the Applicant, however the Examiner will undertake an art rejection for these claims based on a reasonable assumption that these claims logically should depend from Claims 5 and 15 rather than 3 and 13.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21-25 are rejected under 35 U.S.C 102(e) as being anticipated by Gilbert, U.S. Patent #6041313.

Art Unit: 3624

With regard to Claim 21, Gilbert teaches a method comprising:

initiating an account for an employee through a first employer;
(Col. 8, lines 26-32)

associating said account with said employee and said first employer;
(Col. 7 lines 36-47)

receiving investment information from said first employer;
(Col. 5 lines 61-65 ; Col. 6 lines 9-13)

directing the investment of funds provided by said first employer in accordance with said investment information; (Col. 8 lines 56-60)

upon movement of said employee from said first employer to a second employer, associating said account with said employee and said second employer.

Gilbert teaches this limitation to the extent that adding and removing employees is quite easy under the disclosed system. Please see (Col. 7, lines 36-47). Employees are reference by their Social Security Number. Please see (Col. 8 lines 41-45).

With regard to Claim 22, Gilbert teaches the method wherein:

said account has an identifier uniquely associated with the employee.
(Col. 8 lines 41-45)

With regard to Claim 23, Gilbert teaches the method wherein:

the identifier is a social security number. (Col. 8 lines 41-45)

With regard to Claim 24, Gilbert teaches the method comprising:

providing investment accounts for respective employees, each employee having a current employer from a set of employers;
(Col. 7 line 66 – Col. 8 line 2)

for each employee, receiving investment information from the employee's current employer specifying how withheld funds collected by the employee's current employer should be invested; (Col. 8 lines 56-60)

Art Unit: 3624

wherein any employee can switch to a new current employer from said set of employers and continue to invest into the employee's respective investment account through said new current employer.

Gilbert teaches this limitation to the extent that adding and removing employees is quite easy under the disclosed system. Please see (Col. 7, lines 36-47). Employees are reference by their Social Security Number. Please see (Col. 8 lines 41-45).

With regard to Claim 25, Gilbert teaches the method wherein:

the current employer is associated with the employee's respective investment account.
(Col. 6, lines 36-47)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert et al., U.S. Patent #6041313 in view of Meyer et al., U.S. Patent #5933812.

With regard to Claims 1,11 Gilbert teaches a system and method comprising:

calculating settlement amounts for employees according to predefined preferences for withholding investment; and (Col. 5, lines 8-16 ; Col. 7, lines 50-57)

generating an investment database of investment amounts associated with the employees; (Col. 9, lines 16-18 ; Col. 7, lines 50-57)

receiving said investment database; and
(Col. 9, lines 16-18 ; Col. 7, lines 50-57)

coordinating investment of said investment amounts with one or more investment providers. (Figure 6, Process 9 ; Col. 10 lines 55-60))

Gilbert does not expressly teaches a system and method that calculates or maintains gratuity income totals. However, there are numerous system and devices that are designed to capture this type of information as they relate to bar and restaurant employees. Meyer, at (Col. 3, lines 50-65) and in detail at (Col. 7 line 37 – Col. 9 line 47) describes one apparatus that allows a restaurant server to electronically maintain earned gratuities.

Thus Meyer teaches:

employer management circuitry for receiving information regarding sales and credit/debit gratuities for each participating employee of an employer;

It would have been obvious to one of ordinary skill in the art at the time applicant's invention was made, to combine the teachings of Gilbert, relating to a system and method for managing employee retirement plans, with the teachings of Meyer, relating to receiving gratuity information. The motivation for such a combination is described in Gilbert at (Col. 2, lines 18-25) which points out that unlimited new employee additions and individual flexibility are desired. As such, it would be natural to tweak Gilbert to include gratuity tracking for restaurant and bar employees. This would increase the number of employees saving for their retirement.

With regard to Claims 2,12, Gilbert does not teach the system and method comprising:

multiple point of sale devices for receiving the sales, gratuity and investment preference information at respective business locations and generating a location specific investment database; and

a main processor for consolidating said location specific investment databases.

However, Meyer teaches point-of-sale devices that maintain gratuity information at (Col. 3, lines 50-65) and in detail at (Col. 7 line 37 – Col. 9 line 47). These passages describe recording individual gratuities that are then uploaded to a central server. Consolidated information from specific devices is inherent to the system and method of Meyer. Again, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made, to combine the teachings of Gilbert, relating to a system and method for managing employee retirement plans, with the teachings of Meyer, relating to receiving gratuity information at POS device integrated into a network that maintains a totality of information. The motivation for such a combination is that in order to create unlimited new employee additions and individual flexibility as describe in Gilbert at (Col. 2, lines 18-25), it is necessary to maintain the information in a central database at a central location.

With regard to Claims 3,13, Gilbert teaches the system and method comprising:

Receiving said investment database and generating a net investment amount to be credited to the accounts of said employees. (Col. 9, lines 3-5)

With regard to Claims 4,14, Gilbert teaches the system and method wherein:

a net investment amount equals a total of investment amounts for all of the employees less a fee for each investment transaction. (Col. 1, lines 33-50)

With regard to Claims 5,15, Gilbert teaches the system and method comprising:

communicating said net investment amount to a financial institution associated by the employer for transferring the value of said net investment amount to one or more investment providers. (Col. 6, lines 45-47; Col. 8 lines 50-52)

With regard to Claims 6,16, Gilbert teaches the system and method comprising:

transferring information to said one or more investment providers specifying how the money is allocated between the employees. (Col. 8, lines 11-15 ; Col. 9, lines 16-18)

Art Unit: 3624

With regard to Claims 7,17, Gilbert teaches the system and method comprising:

Receiving money in the value of said net investment amount from said financial institution. (Col. 8 lines 56-60)

With regard to Claims 8,18, Gilbert teaches the system and method comprising:

transferring said money to one or more of the investment providers.
(Col. 8 lines 56-60)

With regard to Claims 9,19, Gilbert teaches the system and method comprising:

Transferring information to said one or more investment providers specifying how the money is allocated between the employees. (Col. 8, lines 11-15 ; Col. 9, lines 16-18)

With regard to Claims 10,20, Gilbert teaches the system and method comprising:

identifying each employee by an employer-independent account identifier, such that employees can change from one employer to another employer without changing the account identifier. (Col. 2, lines 18-26 ; Col. 8, lines 26-32)

With regard to Claim 26, the limitations in this claim comprise the exact same steps as in claim 1 and 10 with one exception, which is that the first limitation measures earned commissions. The Examiner respectfully takes Official Notice that keeping a record of earned commissions by sales personnel is old and well known in the art. As such, it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to combine the teachings of Gilbert to specifically include a systems which measures earned commissions by sales personnel. The motivation for such a combination is described in Gilbert at (Col. 2, lines 18-25) which points out that unlimited new employee additions and individual flexibility are desired. It would be

Art Unit: 3624

natural to tweak Gilbert to include employees working for sales commissions. This would increase the number of employees saving for their retirement.

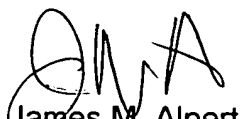
Conclusion

The following prior art, made of record, but not relied upon, is considered pertinent to applicant's disclosure:

Luskin et al., U.S. Patent #6336102, January 1, 2002, Investment Fund Management Method and System.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Alpert whose telephone number is (571) 272-6738. The examiner can normally be reached on M-F 9:30-6:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.


James M. Alpert
June 3, 2005

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